

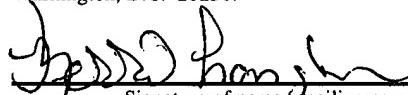
## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of: )  
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                                    )  
                                    Charles L. Branch et al.      )  
                                   )  
                                    )  
                                    Serial No.                        )  
                                   )  
                                    )  
                                    Filed Herewith                )  
                                   )  
                                    )  
                                    INTERBODY FUSION GRAFTS    )  
                                    AND INSTRUMENTATION        )

"Express Mail" Label No. EM372933019US

## Date of Deposit:

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10 on the date indicated above and is addressed to the Commissioner for Patents, Washington, D.C. 20231.



Signature of person mailing paper or fee

**DECLARATION OF JAMES B. MYERS JR.**

Hon. Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, James B. Myers Jr., hereby declare as follows:

1. I am associated with the law firm of Woodard, Emhardt, Naughton, Moriarty & McNett and am an attorney for the Applicants in the above-identified patent application. I am a member of the bar of the State of Indiana and a registered patent attorney, Registration No. 42,021. I make this Declaration in support of Applicants' Petition to Make Special in the above-identified patent application.

2. The above-identified application is directed to spinal implants formed of cortical bone.

3. There is an infringing product actually on the market. Attached to this Declaration and listed as Exhibit A is a brochure by NuVasive™ which describes and illustrates an interbody fusion allograft.

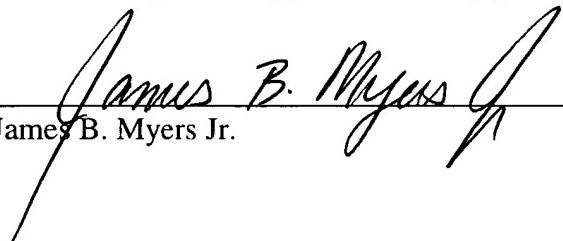
4. The undersigned attorney has made a rigid comparison of the alleged infringing interbody fusion allograft illustrated in Exhibit A and, in his opinion, some of the claims are unquestionably infringed by the interbody fusion allograft.

5. A search was conducted by the International Bureau for spinal implants in the PCT applications Serial Nos. PCT/US99/25147 and PCT/US/98/17769, which are counterpart PCT applications for the U.S. patent applications to which priority is claimed. Copies of the International Search Reports are attached to this Declaration as Exhibits B and C. Additionally, Applicants are filing concurrent with this Declaration an Information Disclosure Statement and a modified Form 1449 listing patents and other documents pursuant to a duty of disclosure embodied in 37 C.F.R. § 1.56.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: May 30 2001

James B. Myers Jr.



**DECLARATION AND POWER OF ATTORNEY  
FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled **INTERBODY FUSION GRAFTS AND INSTRUMENTATION**, the specification of which

(check one) [ ] is attached hereto.

[X] was filed on \_\_\_\_\_ under Express Mail Label No. EM544378655US.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)	Priority Claimed
US98/17769 PCT	August 27, 1998
(Number) (Country)	(Day/Month/Year Filed)
	X
	Yes      No

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

09/181,353            October 28, 1998            Issued  
(Application Serial No.) (Filing Date)    (Status - patent/pending/abandoned)

09/698,623            October 27, 2000            Pending  
(Application Serial No.) (Filing Date)    (Status - patent/pending/abandoned)

09/722,205            November 25, 2000            Pending  
(Application Serial No.) (Filing Date)    (Status - patent/pending/abandoned)

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: Harold R. Woodard, No. 16,214; C. David Emhardt, No. 18, 483; Joseph A. Naughton, Jr., No. 19, 814; John V. Moriarty, No. 26,207; John C. McNett, No. 25,533; Thomas Q. Henry, No. 28,309; James M. Durlacher, No. 28,840; Charles R. Reeves, No. 28,750; Vincent O. Wagner, No. 29,596; Steve Zlatos, No. 30,123; Spiro Berevskos, No. 30,821; William F. Bahret, No. 31,087; Clifford W. Browning, No. 32,201; R. Randall Frisk, No. 32,221; Daniel J. Lueders, No. 32,581; Kenneth A. Gandy, No. 33,386; Timothy N. Thomas, No. 35,714; Kerry P. Sisselman, No. 37,237; Kurt N. Jones, 37,996; John H. Allie, No. 39,088; Holiday W. Banta, No. 40,311; Troy J. Cole, No. 35,102; L. Scott Paynter, No. 39,797; J. Andrew Lowes, No. 40,706; Charles J. Meyer, No. P41,996; Darrin Wesley Harris, No. 40,636; Matthew R. Schantz, No. 40,800; Gregory B. Coy, No. 40,967; Lisa A. Hiday, No. 40,036; John V. Daniluck, No. 40,581; Christopher A. Brown, No. P41,642; Arthur J. Usher, IV, No. 41,359; Scott J. Stevens, No. 29,446; and James B. Myers, No. 42,021.

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Address all correspondence to:

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Woodard, Emhardt, Naughton, Moriarty & McNett

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111 Monument Circle, Suite 3700

Indianapolis, Indiana 46204-5137

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_

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Citizenship: United States of America

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Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_

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Full name of inventor: Loic Josse

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Signature: \_\_\_\_\_ Date of Signature: \_\_\_\_\_

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